IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

CRL.A.No. 335 of 1999()

CRA.37/1997 of ADDL. SESSIONS COURT, THRISSUR
C.C.NO.484/1995 OF J.F.C.M, CHAVAKKAD.

.....

APPELLANT:

C.C. ALI, S/O. CHAKKUTTY,
CHEMPRAYUR, PUTHENPEEDIKAYIL HOUSE,
PORKULAM, PAZHANJI.

BY ADV. SRI.M..T. SURESH KUMAR

RESPONDENTS:

---

1. A.T. SHAHUL HAMEED,
S/O. HYDROSEKUTTY P.M.,
PUZHAKARA ILLATH HOUSE,
THIRUVANKITOM, GURUVAYUR.

2. STATE OF KERALA REP. BY
THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

R1-BY ADV. SRI.P.K.ASHOKAN
R2-BY PUBLIC PROSECUTOR SRI PUZHAKKARA HAMEED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 11/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.335 OF 1999

Dated this the 11th day of June, 2007.

JUDGMENT

The complainant in C.C.No.484/1995 on the file of the Judicial Magistrate of First Class, Chavakkad, is the appellant. By the judgment in the above calender case, the 1st respondent/accused herein was found guilty under Section 138 of the N.I.Act and was directed to pay an amount of Rs.5 lakhs to the appellant/complainant as compensation under Section 357 (3) of the Code of Criminal Procedure. In default of the payment of that compensation, the 1st respondent/accused has to undergo S.I for one year. Against the said judgment, Crl.A.No.37/1997 has been filed before the Sessions Court. The Additional Sessions Court No.1, Trichur, acquitted the 1st respondent and held that the appellant/complainant did not prove that the cheque in question has been issued for a consideration passed on to the 1st respondent/accused and had failed to prove execution of the cheque in question. The appellate court judgment is challenged in this appeal. The case of the complainant before the trial court was that the 1st respondent/accused had issued Ext.P1 cheque for an amount of Rs.5 lakhs on 22.10.1993 as the said

amount was owed to the appellant/complainant. Further case in the complaint was that when the cheque was presented for encashment, the same was dishonoured due to insufficiency of fund in the account of the 1st respondent/accused. On complying the statutory provisions regarding notice etc., the complaint has been filed as the amount has not been paid even after the notice. After the trial, the trial magistrate found that the appellant/complainant had proved the case against the 1st respondent/accused. Hence, the order has been passed. After considering the arguments of the appellant/complainant and the 1st respondent/accused, the lower appellate court found that the appellant herein failed to prove that Ext.P1 was issued by the 1st respondent/accused in discharge of a legally enforcible debt. Hence, the appeal allowed and set aside the order passed by the trial court.

2. This Court heard the counsel appearing on either side and perused the records made available to this Court. The specific case set up by the appellant/complainant before this Court was that on 22.10.1993 the 1st respondent/accused had issued Ext.P1 cheque in discharge of an amount already owed by him towards the appellant/complainant. The lower appellant court found that the cheque in question was issued not in accordance with the case set

up in the complaint as the appellant/complainant failed to prove that the 1st respondent had owed any amount from the appellant/complainant and the appellant failed to prove existence of any consideration for which cheque in question has been issued by the 1st respondent/accused. The facts and circumstances proved in the case would show that the appellant had intervened in a dispute arisen between one Thirunnalath Hammed and the 1st respondent/accused in connection with sale of some gold alleged to have been seized by the Customs Authority.

3. During that mediation, the matter has been settled between Thirunnalath Hameed and the 1st respondent/accused and it was agreed that some amount may be given to said Thirunnalth Hameed and Rs.5 lakhs be given to the appellant/complainant as owed by the said Thirunnalath Hameed towards the appellant. But, there was no evidence before the court to show that any amount has been owed by Thirunnalath Hameed to the appellant as alleged in the complaint which led to the passing of the cheque by the 1st respondent/accused. Further, said Thirunnalath Hameed was also not examined to prove the case against the 1st respondent. In the above circumstances, the lower appellate court held that the appellant miserably failed to prove the case against

the 1st respondent as contemplated under Section 138 of the N.I.Act. According to the principles laid down by the Apex Court in the judgment reported in **Narayana Menon v. State of Kerala** (2006(3) KLT 404 SC) it is the duty of the claimant or the holder of the cheque to prove that there was consideration for the passing of any cheque and if the initial burden is proved , it is the duty of the accused to prove that there was no consideration exits for issuing the cheque in question. Relying on the above principles also, this Court is of the view that the judgment under appeal requires no interference by this court. Accordingly, the appeal is dismissed confirming the judgment of the lower appellate court.

Ordered accordingly.

K. THANKAPPAN, JUDGE.

cl

K. THANKAPPAN, J.

CRL.A.NO.335 OF 1999

JUDGMENT

11th June, 2007.